

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

WANDA J. MILLS,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 99-27-P-H
)	
KENNETH S. APFEL, Commissioner)	
of Social Security,)	
DEFENDANT)	

ORDER ON PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

The plaintiff has moved to alter or amend the judgment in this case on the basis that:

The court's memorandum and order rejecting the recommended decision of the Magistrate Judge treats the issue of consideration of the evidence before the Appeals Council as though it was an issue of first impression, not subject to *stare decisis*. That is not correct.

Pl.'s Mot. to Alter or Amend Judgment Pursuant to Rule 59(e) at 1. This motion then cites a 1983 decision from Judge Gignoux of this District and three unpublished Magistrate Judge Recommended Decisions that were adopted without objection.

Only one of the newly-cited cases confronts head-on the issue I decided. I would certainly have benefitted from Magistrate Judge Cohen's consideration of the issue in Pineault v. Apfel, Civ. No. 96-279-B (D. Me. Nov. 12, 1997)—had it been brought to my attention. But for reasons known only to him, the plaintiff's lawyer did not bother to cite any of these cases when the Commissioner, in objecting to the Magistrate Judge's Recommended Decision, raised the issue I have now

decided. Although it is good practice for the judges of a District to follow each other's decision so as to avoid judge-shopping, the plaintiff is simply wrong in arguing now that my decision is subject to attack on grounds of *stare decisis* (even aside from the fact that the plaintiff did not bring the "contrary" authority to my attention until after I decided against the plaintiff.) There is no legal obligation to follow earlier decisions in the same District. See 18 James Wm. Moore et al., Moore's Federal Practice ¶ 134.02[1][d] (3d ed. 1999) (decision of federal district court judge is not binding precedent in same judicial district); Threadgill v. Armstrong World Indus., Inc., 928 F.2d 1366, 1371 & n. 7 (3d Cir. 1991) (there is no such thing as "the law of the district"); United States v. Articles of Drug Consisting of 203 Paper Bags, 818 F.2d 569, 572 (7th Cir. 1987) (a single district court decision, especially one that cannot be appealed, has little precedential effect); see also Keating v. Secretary of Health and Human Services, 848 F.2d 271, 275 (1st Cir. 1988) (appeal precluded on any issue in magistrate's report not specifically objected to in district court). Instead, the merits of the decision are now the only issue, and they are a proper matter for appeal to the First Circuit—which, as I pointed out in my decision, has not yet taken a position on this issue that has divided the other Circuits.

The motion is **DENIED. SO ORDERED.**

DATED THIS 16TH DAY OF MARCH, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 99-CV-27

MILLS v. SOCIAL SECURITY, COM
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$0,000
Lead Docket: None
Dkt# in other court: None

Filed: 02/08/99

Nature of Suit: 864
Jurisdiction: US Defendant

Cause: 42:405 Review of HHS Decision (SSID)

WANDA J MILLS
plaintiff

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v.

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